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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights of migrants, François Crépeau

Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants*

Summary

The deaths of migrants in the central Mediterranean Sea have vividly and visibly demonstrated the continued importance of the issue of European Union border management in relation to the human rights of migrants. The present report follows the analysis of European Union border control presented to the Human Rights Council in 2013. It will address persistent human rights concerns and examine the long-term feasibility of the European Union's overall migration policy and the application of the Union's founding values and regional human rights standards in relation to integration and diversity.

* The report is circulated in all official languages. The annex to the report is circulated in the language of submission only.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 17/12. It outlines the activities of the Special Rapporteur on the human rights of migrants from 1 April 2013 to 31 March 2014. The thematic section is dedicated to European Union border management and the human rights of migrants.

II. Activities carried out by the Special Rapporteur

A. Participation in consultations and conferences

2. In November 2014, the Special Rapporteur organized an international consultation on recruitment practices and migrant workers at which a thorough and dynamic dialogue was held about key issues, barriers and policy options. The findings will be included in the 2015 report of the Special Rapporteur to the General Assembly.

3. In addition, the Special Rapporteur contributed to a number of international and regional dialogues and conferences, including the annual conference on migrants' rights of the European Union Agency for Fundamental Rights, and the seventh dialogue on protection of the Office of the United Nations High Commissioner for Refugees (UNHCR), on the theme "Protection at sea".

B. Country visits

4. Having found that the 1.8 million Sri Lankans working abroad face many human rights abuses, the Special Rapporteur visited Sri Lanka from 19 to 26 May 2014. He recommended that the Government take a range of measures, including bilateral agreements with countries of destination, the abolishment of recruitment fees for migrants and the full implementation of the code of ethical conduct for private agencies.

5. The Special Rapporteur visited Italy from 2 to 6 December 2014. He found that, despite a challenging economic and political climate, Italy has taken bold initiatives to address the unprecedented number of migrants and asylum seekers arriving by boat. He stressed that European Union member States must collectively support front-line States to provide a sustainable response that fully respects the human rights of migrants.

6. The Special Rapporteur visited Malta from 6 to 10 December 2014. Following that visit, he said that Malta must expect continued growth in the unprecedented number of migrants and asylum seekers arriving by boat and develop programmes to cope.

C. European Union follow-up

7. The visits to Italy and Malta were complemented by a visit to the European Union in Brussels, as part of a follow-up to the Special Rapporteur's 2012 year-long study on the management of the external borders of the Union. In 2013, the Special Rapporteur remained convinced of the importance of addressing irregular border crossings, which is where the most egregious human rights abuses appeared to take place. The increased numbers of migrant crossings and deaths in the Mediterranean Sea, as well as weaknesses in the response by European Union member States, prompted the Special Rapporteur to revisit the issues. In addition, the President of the Human Rights Council requested him, at the Council's twenty-seventh session, to monitor the situation of migrants at sea.

8. The present report should be read alongside the reports on the visits to Italy and Malta and the report to the Human Rights Council on European Union border management (A/HRC/23/46).

III. Follow-up to the 2013 regional study on management of the external borders of the European Union and its impact on the human rights of migrants

A. Introduction

9. Despite some positive developments, the human rights issues raised in the Special Rapporteur's 2013 report persist. The continued ineffectiveness and paradoxes of European Union border management policies and the lack of a coherent, human rights-based approach to migration have been vividly and visibly demonstrated by the deaths of migrants in the Mediterranean Sea. These tragic events have propelled the issue of the human rights of migrants who use sea-based migratory routes into the spotlight. Suffering that is less frequently discussed is also being seen at all stages of migration, including within the European Union.

10. Given the European Union's share of global resources and wealth of substantive normative standards, recent deaths at sea and other human rights issues have to be seen as the result of collective political will and policy choices. The suffering of so many and the tendency of migration to take place clandestinely is a symptom of systemic failings within the European Union border management system and a clear sign that the region is losing control of migration despite sustained investment in securing borders. These failings also cut deeper and speak to how the European Union responds to difference and diversity.

11. The costs associated with attempting to sustain the status quo are huge. The human costs continue to rise as migrants die at sea and suffer on a large scale at borders, within the European Union, as well as in neighbouring countries. Furthermore, the resources lost through investing into an ineffective system and not maximizing the opportunities to benefit from organized migration are significant.

12. To remedy this, the European Union needs to take a whole-system view of migration and review how its related policies and underlying concepts can be shifted to develop a human rights-based approach. Taking a long-term view and banking on mobility over the next 25 years will better place the Union to respond to the significant economic, social and demographic changes that lie ahead.

B. Overview of migration since 2013

1. Sustained increases in non-European Union migrants have not been seen but irregular migration and asylum applications are increasing

13. A sustained increase in overall migration from third countries has not been seen over the past five years. The Organization for Economic Cooperation and Development (OECD) estimates that, in 2012, the European Union experienced a 12per cent decline in migration involving non-European Union nationals.[1] The overall decrease in flows to the European Union is reflective of the fact that the region has broadly deemed migration from third-

[1] OECD, "Is migration really increasing?", Migration Policy Debates (May 2014).

country nationals to be undesirable and dramatically reduced regular migration opportunities.

14. The direct secondary effects of this approach can be seen in irregular migration trends. While regular migration to the European Union is decreasing, a clear trend since the 2013 report is an increase in irregular migration and asylum claims. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) reported that, in the fourth quarter of 2014, irregular migration was at the highest level (100,000 irregular crossings) since 2007, when data started to be shared within the context of the FRONTEX Risk Analysis Network (FRAN).

15. Asylum claims have also significantly increased. Having peaked in 1992 (670,000) and again in 2001 (424,200), the number of asylum applications within the European Union fell to just below 200,000 in 2006. From that relative low point, there was a gradual increase in the number of applications until 2012, after which the rate of change quickened considerably as the number of asylum seekers rose to almost 450,000 in 2013.

16. Within the global context, the proportion of those displaced by humanitarian emergencies seeking refuge in Europe is still small. As reported by UNHCR, the world is currently experiencing the highest levels of displacement since the end of World War II and, at the beginning of 2015, 1.3 million refugees were registered in Lebanon and 1.9 million in Turkey. In comparison, the European Union assessed around 620,000 asylum applications in 2014.

2. Migration trends are diverging

17. Trends in regular migration to the European Union are not affecting all European Union member States evenly. Countries such as Germany, Finland and France have seen increasing flows in 2012, while Italy, Spain and the United Kingdom of Great Britain and Northern Ireland have experienced a decrease in permanent inward migration.[2]

18. Trends in asylum claims too show divergence, with Eurostat figures for 2014 ranging from 126,705 in Germany to 55 in Liechtenstein. Also according to Eurostat, the proportion of applications being processed by Germany, Sweden and Italy went from 37per cent in 2010 to 60 per cent in 2014.

3. Sea-based migration and deaths at sea

19. While a number of precarious, sea-based routes to the European Union exist, by far the most commonly used since 2013 has been the central Mediterranean route. The dramatic increase in the use of that route has tragically resulted in large-scale loss of life. UNHCR estimates that 3,000 people died or went missing at sea in 2014. Events in the first four months of 2015 suggest that the use of this route and the associated avoidable deaths of migrants continue at an alarming pace.

20. While the majority of sea-based migration passes through the central Mediterranean Sea, the European Union is aware that, as a result of efforts to secure the border with Turkey, more refugees and migrants have begun taking the route across the Aegean Sea to the Greek islands. FRONTEX reported that during the period from July to September record numbers of migrants used those channels. In October 2014, the United Nations High Commissioner for Refugees warned that the situation was reaching crisis point.

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[2] Ibid

4. Increased xenophobia towards migrants

21. Against a backdrop of a poor economic climate, the rise in nationalist populist parties within the European Union and the tragic terrorist attacks in Paris at the beginning of 2015, xenophobia and hate speech have increased. This rise in xenophobia against migrants since the Special Rapporteur's 2013 report is a significant trend relating to how migrants are perceived in Europe, as well as a stumbling block in the development of more progressive policies.

5. Positive developments

22. A number of positive developments have taken place in relation to the human rights of migrants within the European Union. These include:

(a) Judgements of the European Court of Human Rights and the European Court of Justice, which have challenged externalization practices, "the Dublin logic", immigration detention and access to social protection issues;

(b) The work of FRONTEX Fundamental Rights Officer Inmaculada Arnaez Fernandez and her staff, which includes the establishment of a code of conduct for joint return operations, the Vega Children Handbook and the establishment of a mechanism for monitoring fundamental rights;

(c) The search and rescue operations provided by both the Government of Italy and FRONTEX through the Mare Nostrum and Triton operations. The Special Rapporteur notes, however, that Triton's operations have been limited, as discussed below;

(d) Regular migration initiatives, including the Blue Card system, the seasonal workers directive and the draft student and researchers directive;

(e) Efforts by the European Parliament and the European Commission to respond to the current crisis in the Mediterranean Sea;

(f) The attention of the European Union Agency for Fundamental Rights on the human rights of migrants, including at the Agency's 2014 annual conference.

23. Despite these positive elements, a continued focus on security continues to structure the way in which the European Union handles border management. A wholesale, coherent integration of the human rights of migrants in policies is missing. The system continues to be characterized by complexity, a lack of harmonization between relevant policies and regional and international human rights standards, limited responsibility sharing and the absence of the political will needed to initiate the required changes.

C. Analysis of the European Union's management of migration and control of its external borders in relation to the human rights of migrants

1. Status quo is not sustainable

24. The current European Union border management system is buckling under the pressure of increased irregular migration, despite the relatively small proportion of those displaced by crisis seeking refuge in the Union.

25. As migrants continue to die at sea, and large-scale suffering is experienced at each stage of migration, it is clear that the European Union does not control migration. This lack of control manifests itself in a number of different ways, raising a wide range of human rights concerns, many of which have persisted since 2013 and have gained increasing impetus and urgency over the past two years.

Precarious routes into the European Union and human rights

26. The use of precarious routes into the European Union, particularly through the central Mediterranean Sea, has increased dramatically since 2013 and resulted in large-scale violations of the right to life, as well as significant human rights abuses at all stages of the migratory process. This form of migration is driven largely by conflict and poverty (push factors), as well as by unmet needs within European labour markets (pull factor). Many of these migrants are being forced to use precarious routes because of their desperate situation and a lack of regular migration opportunities.

27. Organized smuggling rings are profiting from this lack of regular migration channels, staying ahead of border control initiatives and facilitating crossings through precarious routes in exchange for large payments. Smugglers have displayed a remarkable disregard for the dignity, life and rights of migrants and have systematically exploited those desperate to reach safer soil.

28. Commonly, boats carrying migrants to the European Union leave from: Egypt and Libya when using central and eastern Mediterranean channels; Morocco and Tunisia when using the western Mediterranean; and Turkey when using the Aegean Sea route. Many migrants have come an extremely long way, including from sub-Saharan countries and countries in the Middle East, to make these journeys. Migrants travelling through the Sahara are subjected to horrific treatment, including rape and other forms of violence.

29. When migrants reach their intended country of departure, they often suffer further violations of their rights. The European Union Agency for Fundamental Rights has published reports of makeshift camps with extremely poor conditions that are run by migrants in Morocco, as well as of migrants locked in small huts by smugglers in Turkey. Smugglers typically charge several thousand United States dollars per person for boat journeys to the European Union. Families with multiple members can pay in excess of US$ 10,000 to make the trip.

30. The boat trips themselves are perilous, involving very basic vessels that have limited navigation systems, are not seaworthy and often have insufficient amounts of food, water, fuel, first aid kits and life jackets. Boats are usually extremely overcrowded and sometimes contain more than double the recommended capacity. Once migrants have paid for the journeys, they are often forced to go ahead with their plans despite sometimes having second thoughts when seeing the vessels. Migrants have reported incidents of boats not having captains, with inexperienced migrants being required to navigate, as smugglers do not want to risk being caught by the authorities.

31. When smugglers are on the boats, incidents of sexual violence and slavery against women have been reported. The crossing from North Africa takes, on average, between one and three days, but can increase significantly depending on the boat and the maritime conditions. Many boats capsize or go into distress.

32. The search and rescue services provided unilaterally by Italy and FRONTEX are a response to these alarming trends (see appendix). In a report to the Special Rapporteur, the European Commission said that Operation Mare Nostrum had rescued over 160,000 persons at sea in 2014 and that Operation Triton was estimated to have rescued approximately 22,300 people between November 2014 and early 2015. In addition, some private and military vessels have saved migrants' lives. However, as underlined by the International Maritime Organization, the support provided to search and rescue operations by merchant vessels should remain exceptional, and States should shoulder the main responsibility for such operations.

33. While positive efforts to protect migrants' right to life have been made, they remain insufficient. Key challenges include Operation Triton's limited mandate for effective search

and rescue operations compared with the mandate of Operation Mare Nostrum, incoherence in search and rescue zone management, tensions between unilateral and regional interventions, disincentives for private and military vessels to provide assistance to migrants, limited resource commitments from member States and difficulties in establishing disembarkation protocols.

34. While search and rescue services are a vital part of addressing the human rights challenges faced by migrants trying to reach the European Union by precarious routes, the root causes of the use of these channels must be examined. A key driver is the lack of regular migration channels that reflect the European Union's genuine labour needs and the humanitarian and protection needs of those fleeing humanitarian situations. The European Union's collective response to the Syrian crisis exposes a remarkably intransigent refusal to offer Syrians any significant migration opportunities. Most European Union member States have preferred to look the other way, unsurprisingly pushing migrants to turn to smugglers.

35. The increased use of the central Mediterranean route demonstrates beyond any reasonable doubt that, whatever measures the European Union implements, migrants will continue to come to the region and that "sealing" European borders is impossible. The risks that migrants are prepared to take to reach safer soil show that border control measures are not an effective disincentive when desperate people face situations of war, insecurity, violence and extreme poverty.

Externalization

36. Concerning trends in the use of externalization techniques have continued since the publication of the 2013 report. The European Union has adopted the Global Approach to Migration and Mobility as a policy framework with significant scope for future migration governance and border control. The Approach comprises a complex and vast array of loosely associated policy and legal mechanisms, as well as a number of projects in countries of transit and origin.

37. Mobility partnerships are a key tool of the Approach and have been prominent in the recent dialogue held by the European Union on its migration and border management. The partnerships address a broad range of issues ranging from development aid to visa facilitation, circular migration programmes and the fight against unauthorized migration, including cooperation on readmission. The European Union has signed mobility partnerships with Azerbaijan, Jordan, Morocco and Tunisia since 2013. It has also signed a common agenda on migration and mobility with Nigeria.

38. Overall, the Global Approach to Migration and Mobility lacks transparency and clarity on the substantive contents of its multiple and complex elements. Additionally, many agreements reached in the framework of the Approach have weak standing within international law and generally lack monitoring and accountability measures, which allow for power imbalances between countries and for the politics of the day to determine implementation. Nonetheless, the European Union has continued to use the Approach to promote greater "security". There are few signs that mobility partnerships have resulted in additional human rights or development benefits, as projects have unclear specifications and outcomes. The overall focus on security and the lack of policy coherence within the Approach as a whole creates a risk that any benefits arising from human rights and development projects will be overshadowed by the secondary effects of more security-focused policies.

39. Readmission agreements are an area of particular concern. Despite protections against such practices in European Union legislation, pushbacks and refoulement to countries of origin and third countries with weak rule of law and poor asylum systems have been conducted under the broad auspices of bilateral agreements. The European Court of

Human Rights has challenged such practices. In 2012, the court ruled on *Hirsi Jamaa and Others v. Italy*, and held that Italy had violated articles 3, 4 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms by returning Somali and Eritrean migrants travelling by sea back to Libya. The argumentation of the Government of Italy cited the bilateral readmission agreement in place between Italy and Libya. However, the ruling, which was in favour of the applicants and awarded compensation, reflects that bilateral agreements cannot be used to justify practices that are incompatible with human rights. In 2014, in *Sharifi and Others v. Italy and Greece*, the European Court of Human Rights ruled on the treatment of irregular migrants who had entered Italy from Greece and then had been deported back to Greece, with the fear of subsequent deportation to their respective countries of origin. The Court ruled that both countries had violated articles 3 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms and that Italy had violated article 4 of Protocol No. 4 to the Convention.

40. In 2014, the European Commission launched a pilot project introducing a mechanism in Pakistan and Ukraine to monitor whether the human rights of returnees are respected. The project is implemented by the International Organization for Migration with UNHCR and local partners. The Special Rapporteur urges the European Union to ensure its effective implementation and to analyse and publish the results of this implementation. Furthermore, starting now, no one should be returned to any country under the Global Approach to Migration and Mobility without oversight by an effective post-return human rights monitoring mechanism.

Continuing use of detention as a tool of border control

41. After making often extremely long, dangerous and arduous journeys to the European Union, many irregular migrants and asylum seekers are subjected to immigration detention. Detention is also commonly used by many States when migrants are waiting to be returned, either because of an unsuccessful protection claim or because they have been identified through the Eurodac database as having entered the European Union in another country.

42. Some instances of immigration detention in European Union member States are in contravention of international human rights law because such detention is defined in domestic law as not reasonable, necessary or proportionate, and because it is not decided on a case-by-case basis. Additionally, there are a number of human rights concerns relating to the impact of detention. Many migrants perceive their treatment as harsh and punitive, despite irregular migration not being in any way a criminal act. Prolonged detention without a clear basis has been shown to have a devastating effect on migrants' and asylum seekers' mental health, for example by contributing to post-traumatic stress disorder, anxiety and depression. This is frequently compounded by unacceptable detention conditions, such as unsanitary toilet and shower facilities and unhygienic kitchens. Plus, there is a lack of access to health care, as well as to physical and recreational activities.

43. Long periods of immigration detention can also lead to sustained barriers to migrants claiming their economic and social rights, even after having been released. UNHCR research suggests that detention disempowers migrants who are often keen to work. A sustained absence from the labour market and the emotional and mental toll of detention can lead to migrants becoming unnecessarily dependent on State-provided support.

44. Of particular concern is the inclusion of children among detainees. Children are usually afforded additional protections by member States and, according to many national policies, are not supposed to be detained. However, if the age of the child is unknown, which is common among those without documents or coming from countries that do not have robust birth registration systems, they can be detained or kept in reception centres until their age can be verified. This can take weeks or months. In some instances, while in

detention, children live and sleep with adults, without any special accommodation made for their young age and without access to education. In others, families are separated in different sections of the detention facility according to age and gender. The detention of children, even for short periods, can have severe negative psychological effects. It has been made clear by the Committee on the Rights of the Child that immigration detention is never ever in the best interest of the child and that families of migrants should not be separated. Hence, unaccompanied minors and families with children should always benefit from alternatives to detention.

45. Alternatives to detention are being explored. For example, legal reforms in Italy have reduced immigration detention from 18 to 3 months and, in Greece, the Government has announced a policy change to reduce detention times and release significant numbers of detainees. A number of countries have moved towards more open reception facilities, particularly for vulnerable migrants such as children and families. Despite these welcome changes, prolonged immigration detention, and the associated negative consequences on the human rights of migrants, continues in many member States.

Access to justice

46. The Special Rapporteur notes a promising trend in relation to access to justice, as national and regional bodies appear willing to support migrants in fighting for their rights.

47. However, systematic barriers to the right to access justice are in place in many European Union member States. Significant resource constraints are making member States unwilling to invest in services that facilitate access to justice for migrants, such as legal aid and translation and interpretation services. Migrants' fear of detection and/or deportation if they assert their right to access justice is also a key barrier. Additionally, inconsistencies in access to justice persist, depending upon the rights at stake, the type and nationality of the migrants and the jurisdiction. Finally, a lack of specific rules on courts' duties to apply sanctions and/or compensation for violations of migrants' human rights is another important barrier.

48. Concerns about access to justice have been expressed in a number of rulings of the European courts. Decisions of the European Court of Human Rights in *Louled Massoud v. Malta* (2010) and *Suso Musa v. Malta* (2013) held that the way in which both applicants were treated violated articles 5 (1) and (4) on the basis that not all the detention had been legal and proceedings to determine its legality had not been adequately implemented. In June 2014, The European Court of Justice made a significant ruling in the case of Bashir Mohamed Ali Mahdi, emphasizing that, under European Union law, a lack of identity papers should not be used to justify extending immigration detention and that migrants should have access to justice to challenge such detention.

Fingerprinting and freedom of movement under the Dublin system

49. Severe restrictions on the movement of asylum seekers under the Dublin system, which are in sharp contrast to the mobility provided to European Union citizens through the freedom of movement framework. Under the Dublin regime, asylum seekers are required to have their claim assessed in the country deemed responsible for their entry into European Union common territory, which is most often the first country of entry. Once fingerprints have been collected, they are entered into the Eurodac database, which is shared among member States. If migrants whose details are stored in this database apply for protection in other member States, they will usually be returned to the country through which they entered the European Union.

50. The Dublin regulations have not been accompanied with significant standardization of asylum procedures and criteria, therefore creating incentives for migrants seeking to

remain in the European Union to travel to countries other than their first country of entry. In addition, under the Dublin system, migrants are often retained in front-line countries where there are very limited economic opportunities. For example, Italy has faced a huge influx of asylum seekers as well as a sustained economic downturn. This has resulted in migrants becoming stuck where there are no jobs available for them, with disastrous results for migrants and the host society.

51. The system also creates the potential for tension at borders, as many migrants do not want their fingerprints to be taken. Troubling reports have emerged recently about border management officials using force to collect fingerprints. The system also increases the market for smugglers and encourages the use of precarious routes across Europe, as migrants seeking protection are forced to do so in an irregular way, to avoid detection and forced fingerprinting. It is disconcerting to see that European Union rules and practices have caused the reappearance of smuggling routes within the Union, when such routes had practically disappeared with the establishment of freedom of movement.

52. The European Commission took note of the issue of forced fingerprinting in 2014. It requested information from European Union member States on the legal frameworks in place and common practices. Some States, such as Greece, Malta and Italy, have legally allowed the use of force if migrants resist fingerprinting, while other States, such as Austria and Ireland, have prohibited such a practice. Responses from all Governments tend to suggest that migrants and asylum seekers are rarely unwilling to give their fingerprints, while others have said that it is very difficult to force a person who fundamentally will not cooperate. Even countries, such as Malta, that reported migrants being uncooperative at the point of disembarkation claimed the individuals could typically be recalled later for fingerprinting. While these reports by member States are encouraging, troubling anecdotal evidence by migrants and front-line workers suggests that force has been used in countries of first entry to the European Union.

53. The European Court of Human Rights has recently ruled on two significant cases in relation to the Dublin logic. As discussed above, in 2014, the European Court of Human Rights ruled, in *Sharifi and Others v. Italy and Greece*, that both countries had violated articles 3 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In *Tarakhel v. Switzerland*, in November 2014, the Court ruled on the refusal of Switzerland to examine the asylum application of members of an Afghan family and the decision to send them back to Italy without assurances that their rights would be protected. The Court held that there had been a violation of article 3 of the Convention and discussed "systemic deficiencies" in the Italian system. In 2011, in *M.S.S v. Belgium and Greece*, the Court held that Belgium had violated article 3 of the Convention by deporting an Afghan migrant to Greece despite systemic failures in asylum and social protection provisions.

54. Alongside this jurisprudence, there are other signs that the Dublin logic is failing and that the restrictions to freedom of movement are not sustainable. For example, FRONTEX has reported that European Union border States are making significant reforms to detention policies, possibly enabling greater freedom of movement and a decrease in successful returns.

Migrant workers

55. The precarious routes to Europe discussed above are mixed migration channels, with economic migrants also risking their lives to seek opportunities because regular channels for migrant workers to the European Union do not exist. Some progress in opening up economic migration channels has been made through the development of the Blue Card system and the seasonal workers directive. However, use of the Blue Card among European Union member States is low and sustained opportunities for low-skilled migrants are scant. In sectors where regulation is inadequate, such as domestic work, care, construction,

agriculture and tourism, migrants in need of work but unable to get visas come irregularly and can become vulnerable to abuse, violence, restrictions on their freedom of movement and economic exploitation.

56. While the relationship between irregular migration status and labour market abuses is complex, the former will tend to increase vulnerability to the latter. Undocumented workers, constrained by circumstances, will perform tasks at great financial, physical and psychological cost. Little attention has been given to the impact European Union labour market dynamics has on pull factors for irregular migration and the suffering of undocumented migrant workers in the European Union. While the human rights implications of using precarious sea routes have been highly visible, the suffering experienced by undocumented migrant workers inside the European Union is largely invisible.

57. Migrant workers trying to survive in Europe often find themselves subject to racism and xenophobia. Labour market-related abuses and xenophobia within the overall population are mutually reinforcing. It has been reported that employers do not employ even highly skilled foreign workers and that there is a failure to maximize the potential of migrant workers within the European Union, with many migrants underperforming in the labour market relative to their education, in part because of xenophobic attitudes.

58. The unwillingness of European Union member States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families reflects the intention to not be held accountable for human rights abuses against undocumented migrant workers.

2. Developing a human rights-based framework that banks on mobility over a generation

59. All the human rights concerns discussed above are signs of stress within the European Union border management and migration systems. They are clear indications that the status quo simply is not sustainable. Ignoring these warning signs and pouring further resources into an ineffective and paradoxical closure system will lead to further avoidable human suffering, as well as wasted resources and lost opportunity costs from not reaping the rewards of organized mobility.

60. Developing a human rights-based framework by tackling the most pressing concerns and sustaining the political will needed to stay the course of reform over a generation will allow the European Union to bank on the economic and social benefits of mobility.

Developing a human rights-based framework

61. States assume obligations and duties under international law to respect, protect and fulfil human rights. These obligations and duties on States under international law are also broadly echoed by the standards within the European human rights system, which apply to all regardless of nationality and administrative status.

62. A human rights-based framework for migration would ensure the application of these obligations and duties to people in vulnerable situations of migration. It is a framework based on equality and non-discrimination, the duty to protect and access to justice. By upholding the principles of equality and non-discrimination, States acknowledge that human rights are for all and that migrants should be treated as equal rights holders, regardless of their migratory status in relation to the sovereign territory they find themselves in. When migrants are viewed as equal rights holders, a duty to protect them at all stages of the migration process naturally follows. If violations of these rights occur at any point, as equal rights holders, migrants must have access to justice to remedy any injustice.

63. The establishment of a human rights-based framework based on the core principles and provisions of international and regional law requires immediate action to stop widespread suffering at the borders of the European Union.

64. A vital first step is for the European Union to scale up search and rescue operations at sea to at least the level of Operation Mare Nostrum. While some efforts have been made, it is vital that the European Union expand the resources committed to providing assistance to those in distress at sea. The Special Rapporteur urges the European Union to strengthen its search and rescue capacity, while also doing the following: respecting the principle of non-refoulement; allowing irregular migrants to disembark immediately at the nearest port; providing information, care and support to migrants; processing asylum claims equitably; and supporting commercial vessels in exceptional circumstances to carry out rescue operations without risk of retaliation or harassment for being considered accessories to smuggling operations. The priorities should be clear: fighting smuggling operations is less important than saving lives. The argument according to which one should not increase search and rescue capacity in order to avoid encouraging smuggling operations is morally, politically and legally unacceptable when human lives are at stake.

65. The development of a human rights-based framework goes beyond protection at sea. Stepping up the creation of alternatives to detention, particularly for children, is another issue of concern that should also be a priority.

66. In the long term, the European Union needs to take stock of the durable failure of the Dublin logic and develop options for solidarity among its member States and greater freedom of movement for migrants in Europe. Reversing the present logic, asylum seekers should be able to register their asylum claim in the country of their choice and the European Union should build upon current initiatives and support the countries receiving asylum claims with proportionate and adequate financial and technical support. Standardizing reception conditions and refugee status determination procedures throughout the European Union should be a top priority, in order to avoid "asylum dumping" and stress on the countries that offer better conditions.

67. Developing a human rights-based framework will require continued commitment and the development of many more regular migration channels, including resettlement opportunities for refugees. The most effective way to do this is to begin a process of opening up regular migration channels to the European Union, exploring a range of options.

68. Firstly, many people presently crossing the Mediterranean Sea are, thanks to smugglers, manifestly in need of international protection, such as most Syrians and Eritreans. One cannot expect Syrians to live in camps or cities in Jordan, Lebanon or Turkey indefinitely, with no prospects for a better life. If no other option is available, refugees will take their chances with smugglers in order to provide a future for themselves and their children, as many Europeans have done in similar circumstances in the past. Through resettlement programmes for refugees and other humanitarian visas and opportunities, it is well within the European Union's means to develop the mechanisms necessary for providing refuge, over a number of years, for 1 million of refugees displaced by the Syrian and other major conflicts. Together with partner States in the global North and elsewhere, creating a reliable long-term programme will ensure that a large number of refugees will line up for resettlement rather than spend tens of thousands of euros and risk their lives and that of their children in smuggling operations. This would considerably reduce the market for smugglers and the cost of refugee status determination procedures in Europe.

69. Secondly, smugglers and exploitative employers are presently implementing the labour mobility that many European labour markets need in order to thrive. Through creative visa opportunities for work at all skills levels, including for low-wage migrants, the

European Union could streamline the number of migrants coming through irregular means. Coupled with entry and exit controls and other supporting initiatives, multi-year and multi-entry visas could incentivize migrants to come to the European Union for work and return to the country of origin while respecting visa conditions. For such a plan to be successful, the European Union and its member States will need to considerably reduce underground labour markets and exploitation in the workplace over the coming decade, as they act as a magnet for irregular migration at the request of exploitative employers: tougher labour inspection mechanisms and stronger labour unions will be needed to achieve such results.

70. Fully sustaining the implementation of a human rights-based framework for regular migration across the European Union therefore involves: increasing search and rescue capacity; facilitating access to justice for migrants; developing alternatives to detention; reinforcing labour inspection mechanisms needed to ensure the rights of all workers in the European Union, including migrant workers; creating massive resettlement programmes for refugees; and creating multiple labour migration visa opportunities to incentivize migrants to use regular migration channels.

71. The successful implementation of this policy mix requires challenging the many intersecting and negative perceptions of migrants and migration that have pervaded European Union debates, discourses, policies and politics. The strict conceptual delineation between internal and external migrants, demonstrated by the freedom of movement within the Schengen region and the securing of external borders, conflicts with a human rights-based framework for migration that is based on equality and non-discrimination. This distinction also rests on the assumption that sealing international borders is possible, which the unsustainable status quo strongly shows is not the case.

72. The view of migrants among many stakeholders as "illegal" is counterproductive and is not based on facts or the provisions of international law. While migrants who come to the European Union without documents are in an irregular situation (or "undocumented" or "unauthorized"), they have not committed a criminal act. The conceptualization of irregular migrants as "illegal" has undoubtedly played into the use of immigration detention. It has also had an impact on the general public's perception of migrants, legitimizing policies that are not in line with human rights guarantees and contributing to xenophobia and discrimination.

73. The common conception that migrants are "job stealers" is also a harmful fantasy. Much economic literature (see Card and Peri[3]) has highlighted how migrants complement rather than compete with citizens, therefore creating greater overall productivity within the economy. A 14-year study (Peri and D'Amuri[4]) into the effects of non-European Union migration on 15 Western European countries showed that by taking manual jobs, migrants pushed natives towards more highly skilled and better-paid jobs. In that study, a significant increase in more complex skills among natives following migration was noted. The labour market adjusted with no significant impact on natives' employment rates. The impact of the global recession was shown to decrease but not eradicate this positive phenomenon, debunking the argument that an economic downturn justifies repressive policies.

74. Similarly, conceptions of migrants as "a burden" are not based in reality, nor are they productive. Much European Union debate focuses on the need to share the "burden" of

[3] David Card, "The impact of the Mariel Boatlift on the Miami labor market" (1990); Giovanni Peri, "Immigrants' effect on native workers: new analysis on longitudinal data" (2015); Andri Chassamboulli and Giovanni Peri, "The labor market effects of reducing the number of illegal immigrants" (2015).

[4] Francesco D'Amuri and Giovanni Peri, "Immigration, jobs and employment protection: evidence from Europe before and during the Great Recession" (2012).

irregular migration across different member States. Against a backdrop of fiscal and demographic challenges in many countries and political discourses of austerity, discussing external migration as a "burden" again legitimizes the further securing of borders and encourages negative public attitudes. While society undoubtedly has a responsibility towards migrants and more solidarity in sharing this responsibility is encouraged, migration in itself is not and should not be presented as a burden. Much economic literature suggests that, as workers, consumers and taxpayers, migrants contribute to the economic growth of societies with very limited downsides. In fact, the perceived burden of migration comes predominantly from the financial, technological and human resources necessary to implement the European Union's counterproductive security-focused policies and deal with their unintended (although foreseeable) secondary effects. Acknowledging that migrants are human beings with rights, the European Union and its member States should be talking about sharing a responsibility, not a burden.

75. The normative basis for more positive, realistic views of migrants sits within an abundance of fact-based analysis, as well as the European Union's founding values of respect for human dignity, freedom, democracy, equality, the rule of law and human rights for all, as evidenced in the robust human rights regime and the international human rights instruments that member States have ratified.

Banking on mobility over a generation

76. Applying the European Union's core values to policies that are based on fact rather than fiction leads to migration policies that facilitate mobility and celebrate diversity. The long-term development of the human rights-based framework discussed above will become increasingly vital to the Union's internal and external interests. Over the next 25 years, Europe will undergo large-scale demographic, societal and labour market changes.

77. By 2025, more than 20 per cent of European Union citizens will be over 65 years of age, with a particular increase in those over 85. The population of elderly people will almost double, from 87.5 million in 2010 to 152.6 million in 2060. It is also expected that the share of those aged 80 and over will rise from 5 to 12 per cent.[5] At the same time, many member States have fertility rates below the rate of replacement. An average fertility rate of 2.1 children per woman is estimated to be necessary to keep the population at a stable size between generations in developed countries. United Nations population data suggests that between 2010 and 2015 all European Union countries will have had average fertility rates below the 2.1 mark with the regional average being 1.6.

78. In line with these demographic changes, the European work force is declining. In 2010, for the first time, more workers were retiring from the European labour market than were joining it. The European Union and OECD are predicting that, with a zero net increase in migration, the working age population will drop by 3.5 per cent by 2020. Over the next 50 years, the working-age population is expected to decline by nearly 42 million.[6]

79. These changes have the potential to exacerbate and widen existing skills gaps within the European Union. Of the companies that responded to the 2013 European Company Survey, 40 per cent stated that, despite high unemployment levels, they found it difficult to find applicants with the correct skills set. The demographic shifts discussed above are going to add pressure and impetus to the need to ensure balance between labour supply and demand. According to both the European Union and OECD, for the European Union to

[5] European Commission, *Population Ageing in Europe: Facts, Implications and Policies* (2014).

[6] Ibid. See also OECD and European Union, "Migration Policy Briefing" (2014).

meet its 2020 employment targets, it will need to employ a mix of policies and reconsider how it utilizes the skills of non-European Union migrants.

80. In the context of such shifts, the European Centre for the Development of Vocational Training has projected that there will mainly be an increase in demand for workers with medium and high skill levels and that demand for workers with low skills will decrease. However, demand for low-skilled workers in 2025 is still projected to be significant, at around 43 million. This figure has to be viewed against the European Union 2020 target of increasing the proportion of citizens gaining a tertiary education, as well as the already rapid increases in those doing so. According to the Centre, between 2002 and 2013, a 13 per cent increase in the proportion of 30-34 year olds who have attended tertiary education and a 57 per cent increase in the absolute number of tertiary education graduates were recorded.

81. Another reason for adopting a human rights-based approach is the European Union's need to remain globally competitive. The World Economic Forum has noted diverging trends between European countries, with some, such as Germany, the Netherlands, Sweden and the United Kingdom, being among the top-10 most competitive economies in the world, and others lagging behind. The highest-ranking European Union country was Germany, in fifth place, and the lowest-ranking was Greece, in eighty-first place.[7] There is currently a low level of highly skilled labour migration from non-European Union countries to most member States owing to barriers to legal access and an informal reluctance by employers to hire from outside the region. This demonstrates how an approach defined by an emphasis on security can permeate all dimensions of migration.

82. Well-organized migration would allow member States to properly understand the skill level of non-European Union migrants and support realistic strategies for filling labour gaps and shortages in order to maintain and build global competitiveness. Migrants in irregular situations cannot be assumed to have low skill levels. Those that do can still contribute in important ways, given the aim of building the capacity of Europeans and the continued projected demand for low-skilled workers.

83. A well-organized migration policy based on mobility and human rights could also help the European Union to enhance its humanitarian and development impact. In 2013, migrants sent approximately $404 billion in remittances, as highlighted in the 2013 report of the Special Rapporteur. Migrants who moved from countries with a low human development index to countries with a higher index experienced, on average, a 15-fold increase in income, a doubling in education enrolment rates and a 16-fold reduction in child mortality. If the human rights of migrants are effectively promoted, respected and protected within well-governed migration processes, such development outcomes can be greatly enhanced.

84. Committing to a generational shift in migration policy that recognizes that external mobility can mirror the benefits of internal mobility, will better equip the European Union and its member States to deal with these economic, social and demographic changes in a way that sustains recovery, encourages growth and further develops global competitiveness. It will also allow the European Union to truly promote its founding values in its relations with the rest of the world, as envisaged in its Constitutional Treaty.

[7] World Economic Forum, *The Global Competitiveness Report 2014-2015* (Geneva, 2104)

IV. Conclusions and recommendations

A. Conclusions

85. The events in the Mediterranean Sea and the mirroring of this suffering across each stage of the migratory process within the past two years have clearly shown that the status quo in relation to the European Union's approach to border control, asylum and migration is not sustainable. The ability of migrants to reach European soil despite a huge investment in securing borders demonstrates beyond a doubt that sealing international borders is impossible. Migration is a long-standing part of the human condition and, in the globalized and conflict-ridden world in which we live, it is inevitable.

86. The costs of denying this reality are huge. Most significantly, the human costs continue to grow. There are no signs that the push and pull factors influencing migratory patterns will change and the many grave associated human rights abuses will decrease. In addition to the human costs, the huge investment of resources by the European Union and its member States into ineffective and paradoxical border control mechanisms could be spent in many other ways.

87. As huge as these costs are, they are in no way inevitable. It is not beyond the moral agency of the European Union to considerably reduce the suffering of large numbers of migrants. The Union's regional system of human rights and other normative standards, its founding values and its strong tradition of promoting peace, security and human rights, clearly show that the Union has the potential to play a global leadership role on the issue of migration.

88. Claiming this leadership role involves the development of coherent and holistic human rights-based approaches that require short-, medium- and long-term interventions. It is vital that, in the short term, the European Union step up search and rescue operations, further explore alternatives to detention, particularly for children, start providing more resettlement opportunities for people from the Syrian Arab Republic and other countries, in line with its share of global resources, and take stock of the failing Dublin logic and the systemic pressures it is creating.

89. While this would already have a significant impact on the human rights of migrants, it is important that the European Union also take a strategic, long-term view. In the medium term, the Union should continue to provide resettlement opportunities and open regular migration channels at all skills levels, invest in labour inspection and tackle xenophobia, racism and discrimination against migrants. These changes need to be sustained over the long term and accompanied by a fundamental rethinking of the conceptualization of migrants and the development of integration programmes within the context of general diversity policies.

90. To achieve sustainable success, the European Union must consider how its founding principles and normative standards apply to those who are not citizens of its member States. It must use fact-based analysis and rational, long-term thinking to challenge the many negative conceptualizations that underpin current social and policy debates relating to migration within the Union. These include the strict delineation between internal and external migrants, the idea of irregular migrants as being "illegal", the preoccupation with irregular, non-European Union migration as being a "burden" within the context of continuing fiscal challenges and the perception of migrants as being "job stealers" who deprive native citizens of economic opportunities.

91. **The benefits of this rethinking and of the European Union taking a leadership role go far beyond the fulfilment of normative commitments. Fact-based economic analyses have tended to conclude that migrants contribute to economic growth and productivity. As Europe changes over the next generation, extending mobility to those outside its borders will allow European Union member States to reap opportunities for peace, security and sustainable development both within and outside the Union.**

B. Recommendations

1. General recommendations

To the European Union and its member States

Overall

92. **Accept the impossibility of "sealing" borders and the perverse incentives and paradoxes created by the current system, as well as the inevitability and benefits of mobility. Conversely, highlight the necessity of incentivizing all migrants to default to services provided by the European Union and its member States and use entry and exit control mechanisms rather than resorting to smuggling rings.**

93. **Invest in the overall development of a coherent and robust migration policy that fully reflects the human rights of migrants as enshrined in both international and regional law.**

94. **Convey a road map for the evolution of this policy by developing a full 25-year strategy that outlines clear short-, medium- and long-term interventions and that articulates a shared vision for how the European Union can bank on mobility over a generation.**

95. **Invest in filling data gaps — such as those around underground labour markets, labour exploitation of migrants, deaths at sea and push and pull factors — to develop evidence-based policies. In addition, increase harmonization and coordination in respect of migration data sources to develop a systemic picture.**

96. **Through fact-based analyses and long-term thinking, reflect on the conceptualizations of migrants and migration that underpin counterproductive and ineffective security policies and result in the criminalization and stigmatization of migrants.**

97. **Integrate these analyses at a political level, as well as within public communication and education curricula.**

98. **Fully recognize the push and pull factors of irregular migration, including that undertaken by sea, and the European Union's responsibility in managing and mitigating them.**

99. **Use the region's considerable global influence, including two permanent and one non-permanent seat on the Security Council, to push for more effective solutions to humanitarian crises in the Syrian Arab Republic, Ukraine and other countries.**

Regular migration channels

100. **Take a global leadership role in relation to the Syrian civil war and other humanitarian crises and reduce the market for smugglers by developing, in cooperation with other States in the global North, resettlement opportunities so that**

the European Union can accommodate over 1 million of the world's refugees (0.2 per cent of the total population of the European Union) over a number of years.

101. **Develop and incentivize other regular and safe migration channels, including for workers with varying skills levels, including for low-wage workers. Look at a variety of options for legal migration, such as humanitarian admission, humanitarian visas, temporary protection, family reunification, economic admissions at all skills levels, as well as for job seeking, student mobility and medical evacuation, in line with the suggestions of the European Union Agency for Fundamental Rights.**

102. **European Union member States should increase the number of migrants admitted under existing regular migration schemes, including the Blue Card system, the seasonal workers directive and the future student and researcher directive.**

Search and rescue

103. **Prepare for more arrivals by sea and commit to fully implementing obligations under international law to provide search and rescue services to migrants in distress at sea, with State provision being the cornerstone of search and rescue operations.**

104. **Carefully consider options for how incentives that negatively impact private vessels' willingness to assist migrants in distress can be removed, including the development of a means by which compensation is given for commercial losses.**

105. **Develop protocols for how military vessels deployed in the Mediterranean Sea for purposes other than search and rescue should respond to incidents of migrants in distress to complement State action.**

106. **Further develop solidarity and responsibility-sharing mechanisms between border and non-border States in relation to search and rescue operations and processing protection claims through the provision of technical, financial and human resources.**

External management of migration

107. **Improve the coherence of the Global Approach to Migration and Mobility, integrate rigorous human rights, due diligence, monitoring and oversight mechanisms into all external agreements and prioritize projects in countries of origin and transit that will improve the human rights of migrants. For example, as suggested by the European Union Agency for Fundamental Rights, prioritize support that improves search and rescue operations within efforts to build the border management capacity of non-European Union States, as well as support for national human rights institutions.**

108. **Make promoting genuine mobility for non-European Union migrants the cornerstone of the Global Approach to Migration and Mobility.**

Dublin and detention

109. **Take stock of the systemic failure of the Dublin mechanism. Reverse the present logic by allowing asylum seekers to register their asylum claims in the country of their choice within the European Union, while supporting the countries receiving asylum claims with proportionate and adequate financial and technical support.**

110. **Invest in the considerable expansion and harmonization of the European Asylum Support Office through several mechanisms, including through mutual recognition of refugee status determination decisions, exchange of refugee judges**

between States, a common European Union refugee determination appeal board and common or shared reception mechanisms.

111. Develop coordinated efforts to move away from the detention of all migrants, investing in alternatives that avoid punishing those arriving irregularly. Look towards a model that quickly responds to and capitalizes on the strong desire of the vast majority of migrants to work and contribute to society.

112. In line with the best interests of the child principle, step up protections afforded to migrant children, particularly unaccompanied minors, and families with children. Aim to eradicate the detention of children completely and to respond adequately to the vulnerability of children in reception and social protection provisions. Age verification is not a justification for detention and member States should move towards a model that assumes vulnerability and responds by providing adequate protection, given the particularly damaging impact of even short periods of detention on children.

Access to justice and social protection

113. Remove barriers to access to justice ensuring migrants can effectively — and not simply on paper — access legal remedy for violations of their rights. Facilitating access to justice, without fear of detection, detention or deportation, in order to help migrants fight for their rights, would go a long way towards, on the one hand, legitimizing new migration policies by showing that territorial sovereignty and human rights are not incompatible, and, on the other hand, changing mentalities regarding migration through fighting fantasies and stereotypes.

114. Develop "firewalls" between immigration enforcement and public services, so that all migrants in the European Union can seek access to justice and to social services without fear of being denounced to immigration enforcement authorities and deported.

115. Ensure that those who offer services, such as assistance to search and rescue operations, medical support, shelter and legal advice, are explicitly protected from prosecution under the facilitation directive.

Migrant workers

116. European Union member States should be weaned off their reliance on cheap labour provided by migrant workers in specific economic sectors and should ensure labour rights are upheld for all, including migrants, including irregular migrants, through full implementation of the employers sanctions directive and rigorous labour inspection. Long-term investment in enforcement of the labour and human rights of all workers, including migrant workers, whatever their status, will allow the Union to fill the inevitable increase in gaps in its labour markets in an efficient and organized way.

117. Improve accountability of violations of the rights of migrants, including through continued support and cooperation with the European Ombudsman and by strengthening the coordination of national human rights institutions.

118. Reconsider the general refusal of EUMS to ratify the International Convention on Migrant Workers.

2. Recommendations to specific European Union institutions

To the European Commission

119. **Lead the development of a coherent and rights-based migration policy, including a 25-year strategy for European Union institutions and member States.**

120. **Further develop existing initiatives to mainstream human rights into the work of the Directorate General for Migration and Home Affairs.**

121. **Investigate violations and promptly initiate infringement procedures against member States who violate the Charter of Fundamental Rights of the European Union with respect to the rights of migrants.**

122. **Step up work to explore the feasibility of new ways to provide legal avenues of migration for those in humanitarian situations and quickly implement reform.**

123. **Develop better policy coherence between the work of the different Directorate Generals of the European Commission in relation to migration. Aim to connect the humanitarian work of the Directorate General for Humanitarian Aid and Civil Protection, with the broader work of the Commission on migration, particularly the Directorate General for Migration and Home Affairs.**

124. **Provide support to member States on the integration of the Common European Asylum System into national law and its effective implementation.**

125. **Through the work of the Directorate General for Employment, Social Affairs and Inclusion, support member States in moving away from cheap labour predicated on the abuse of migrant workers towards a system of fair, organized and legal migration, through the repression of exploitative employers.**

126. **Lead efforts to counter negative anti-immigration discourses in order to facilitate and improve the integration of migrants in Europe.**

European Parliament

127. **Exercise democratic oversight of migration policies and practices, encouraging a prioritization of human rights concerns throughout.**

128. **Focus on improving democratic control and strengthening human rights due diligence and monitoring in relation to the development of external migration agreements under the Global Approach to Migration and Mobility.**

To FRONTEX

129. **Increase the resources and independence given to the FRONTEX Fundamental Rights Officer to continue and build upon work completed so far.**

130. **Ensure that Operation Triton upholds international standards in relation to protection at sea and that the full transition from Operation Mare Nostrum does not result in the avoidable loss of life of migrants in the Mediterranean Sea.**

131. **Use its coordination and information-sharing mandate to support the development of consensus and coherence in relation to search and rescue zones and disembarkation practices.**

132. **Refrain from using the term "illegal" in reference to migrants at all times.**

133. **Ensure that allegations of human rights violations committed in the context of FRONTEX operations are adequately followed-up on. Establish and adequately fund the individual complaints mechanism for violations of the human rights of migrants**

(as provided for in article 26 (a) (1) of Regulation (EU) No. 1168/2011), as recommended also by the European Ombudsman in the context of its inquiry regarding case OI/5/2012/BEH-MHZ. Individuals and their families, as well as civil society organizations should have access to the complaint mechanism and to adequate reparations.

134. **Pursuant to article 3 (1) (a) of Regulation (EU) No. 1168/2011, suspend or terminate operations in cases of persistent and serious violations.**

To the Council of Europe

135. **Support the European Union in mainstreaming human rights concerns into migration and border management policies and implementing the relevant, recent judgements of the European Court of Human Rights, therefore developing further synergies between the two organizations.**

To the European Union Agency for Fundamental Rights

136. **Continue its vital work in developing the evidence base related to key migration and human rights issues, including border management, integration and access to justice. Raise the profile of these issues and report on key challenges.**

137. **Integrate follow-up to the 2014 Fundamental Rights Conference into that work.**

To the European Ombudsperson

138. **Continue its crucial work in establishing accountability for violations of migrants' rights.**

139. **Develop further cooperation between national human rights institutions and the European Ombudsperson on issues related to migration.**

Annex

[English only]

A. Additional sources consulted for the Special Rapporteur's report

1. In addition to the three country visits undertaken, as well as insight gained from the Special Rapporteur's on-going contribution to regional dialogues, the following sources were consulted:

- Amnesty International. 2015. "EU 'burying heads in the sand' as hundreds more migrants die at sea off Italy"
- Amnesty International. 2014. "Lives Adrift"
- Amnesty International. 2014. "Fortress Europe"
- Coleman, N. 2009. "European Readmission Policy"
- Council of Europe Commissioner for Human Rights. 2013. "The right to leave a country"
- European Commission. 2014. "Report on the implementation of the Global Approach to Migration and Mobility", 2012-2013
- Carrera, S & den Hertog, L. 2015. "Whose Mare? Rule of law challenges in the field of European border surveillance in the Mediterranean"
- Card. 1990. "The Impact of the Mariel Boatlift on the Miami Labor Market"
- Cedefop. 2014. "Skills forecast, main results"
- D'Amuri, F & Peri, G. 2012. "Immigration, Jobs and Employment Protection: Evidence from Europe before and during the Great Recession"
- Gallagher, A. 2015. "Migrant Smuggling"
- Economist. 2014. "Quality Time"
- Eisele, K. 2014. "The External Dimension of the EU's Migration Policy"
- Europa. 2015. "Questions and Answers: Smuggling of Migrants in Europe and the EU response"
- European Commission. 2015. "Public Health, Policy"
- European Commission. 2015. "Reply by DG Migration and Home Affairs to the questions by the Special Rapporteur on the human rights of migrants"
- European Commission. 2014. "Employment: report shows worker mobility key to tackle EU demographic and skills challenges"
- European Commission. 2014. "Population ageing in Europe. Facts, implications and policies"
- European Commission. 2014. "Employment: report shows worker mobility key to tackle EU demographic and skills challenges"
- European Commission. 2014. "Ad-Hoc Query on EURODAC Fingerprinting"
- European Commission. 2013. "Directive of the European Parliament and of the council on the conditions of entry and residence of third-country nationals for the

purposes of research, studies, pupil exchange, remunerated and unremunerated training voluntary service and au pairing"

- European Court of Human Rights, 2014, "Dublin Cases Factsheet"
- European Court of Human Rights, 2014, "*Sharifi and Others v. Italy and Greece*"
- European Court of Human Rights, 2012, "*Hirsi Jamaa and Others v. Italy*"
- European Court of Human Rights, 2012, "Case of *Louled Massoud v. Malta*"
- Eurofound, 2014, "2013 European Company Survey, Headline findings"
- European Policy Centre, 2015, "Historical choices after the massacres in Paris"
- EUROSTAT, 2014, "Asylum statistics"
- EUROSTAT, 2014, "Asylum quarterly report"
- EUROSTAT, 2014, "Europe 2020 Indicators"
- FRA, 2015, "Legal entry channels to the EU for persons in need of international protection: a toolbox"
- FRA, 2014, "Fundamental rights at Europe's southern sea borders"
- FRA, 2014, "Conference Conclusions"
- Frontex, 2014, "FRAN Quarterly, Quarter 3, July –September 2014"
- Human Rights Watch, 2015, "World Report"
- Human Rights Watch, 2012, "Boatride to Detention"
- García Andrade, P, 2013, "The Legal Feasibility of the EU's External Action on Legal Migration: The Internal and the External Intertwined"
- Global Detention Project, 2015, "Countries"
- Global Initiative against Transnational Organised Crime, 2014, "Smuggled Futures: The dangerous path of the migrant from Africa to Europe"
- Guild, E. & Minderhoud, P, 2012, "The First Decade of EU Migration and Asylum Law"
- ILO, 2015, "Discussion paper: Promoting decent work for migrant workers"
- ILO, 2011, "Equality at work: The continuing challenge"
- Immigration Law Practitioners' Association, 2014, " Information sheet, Dublin III"
- IMO, 2014, "International Convention on Maritime Search and Rescue"
- IOM, 2014, Interview with Admiral Pettorino, Italian Coast Guard: "Saving Lives is Our Only Concern"
- JRS, 2014, "Alternatives to Detention"
- JRS, 2013, "Protection Interrupted"
- Migreurop, 2013, "Atlas of Migration in Europe"
- Migrant Policy Institute, 2013, "Immigrant and Emigrant Populations by Country"
- New York Times, 2015, "Germany Isn't Turning Backward"
- New York Times, 2015, "Debunking the Myth of the Job-Stealing Immigrant"
- OECD, 2014, "Matching Economic Migration with Labour Market Needs"

- OECD, 2014, "Migration Policy Debates"
- Oxford University & European Research Council, 2015, "The New Face of Italian Immigration Detention: A Retreat from the Criminalisation of Migrants"
- Oxford University, 2014, "Irregular Migrants in Italy"
- Peri, G, 2015, "Immigrants' Effect on Native Workers: New Analysis on Longitudinal Data"
- Peri, G, 2015, "The Labor Market Effects of Reducing the Number of Illegal Immigrants"
- Policy Review, 2014, "Racism is rife in the workplace right across Europe"
- Red Cross Office for Europe, 2013, "Shift Borders, Externalising migrant vulnerabilities and rights?"
- Sampson, R & Mitchell, G, 2013, Journal on Migration and Human Security, Volume 1 Number 3 (2013): 97-121,"Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales"
- UN DESA, 2014, "Fertility Rates"
- UNHCR, 2015, "War stokes further growth in forced displacement in first half 2014"
- UNHCR, 2014, "The Dublin Regulation"
- UNHCR, 2014, "Background paper: High Commissioner's Dialogue on Protection Challenges: Protection at Sea"
- UNHCR, 2014, "Central Mediterranean Sea Initiative"
- UNHCR, 2013, "A New Beginning, Refugee Integration"
- UHCHR Malta, 2012, "UNHCR launches report on the public's view about refugees and migrant"
- UN OHCHR Regional Office for Europe, 2013, "Rights of Migrant Domestic Workers in Europe"
- UN OHCHR Regional Office for Europe, 2013, "The Human Rights of Migrant Workers"
- UN OHCHR Regional Office for Europe, 2015, "General background on EU migration policies"
- UNODC, 2011, "The role of organized crime in the smuggling of migrants from West Africa to the European Union"
- UNRIC, 2015, "Migrant centers to be shut down after suicide"
- United Nations University WIDER, 2013, "The External Dimension of the EU's Migration Policy: Towards a Common EU and Rights-Based Approach to Migration?"
- World Economic Forum, 2014, "The Global Competitiveness Report 2014–2015"

B. Key legal, institutional and policy developments since 2013

2. As discussed in the Special Rapporteur's 2013 report, there are a large number of legal, institutional and policy mechanisms that contribute to migration, border control and

asylum. The focus of the below section will be on the most pertinent developments since 2013.

1. Legal

Dublin III

3. The Dublin system was updated in 2013 by two EU directives, which form part of the most recent asylum acquis. The Eurodac regulations (Regulation (EU) No. 603/2013), established a database system whereby migrants are fingerprinted in their country of origin to ensure they can be returned to the country in which their asylum claim should be processed under Dublin. Regulation (EU) No. 603/2013 also updated the overall regulations governing the Dublin Regulations system. Following the passing of Dublin Regulation III and No. 603/2013, the recasted Dublin Regime came into force in January 2014.

4. The overall purpose of the updated regime is: to ensure that one Member State is responsible for the examination of an asylum application; to deter multiple asylum claims; to determine as quickly as possible the responsible Member State to ensure effective access to an asylum procedure; and to ensure procedural safeguards such as the right to information, personal interview, and access to remedies as well as a mechanism for early warning, preparedness and crisis management.[8]

5. Some new provisions are included which could potentially improve the protection of the rights of migrants, including restrictions on the use of detention when transferring a migrant between countries, respect for the unity of the family and a duty on states to inform migrants of the implications of being transferred between countries. Under the regime one member state is responsible for the examination of an asylum claim and the normal process is that the country the migrant arrives in processes an asylum application. However under the regulations migrants cannot be returned to the countries they originally entered to have their claims processed if there are systemic failings within the asylum system.[9]

6. In addition, Dublin III introduces an early warning mechanism and aims to make it easier to detect problems in a member state's asylum system so that the EU Commission and the European Asylum Support Office (EASO) can provide early assistance before the situation degenerates.

EU Regulation 656/2014

7. As a response to protection at sea challenges, EU regulation on surveillance of the external sea borders in the context of Frontex co-operation was adopted in May 2014 and entered into force in July. It sets out rules for the interception of vessels during joint operations at sea, including for SAR situations and the disembarkation of intercepted or rescued people. The aim of the new Regulation is to resolve confusion over diverging national interpretations of international provisions on maritime surveillance by setting out clear rules to be laid out in Frontex operational plans and followed during Frontex joint operations.[10]

8. According to the regulation, if during a joint operation there is reason to believe that a vessel or persons on board are in an emergency situation, the maritime and aerial assets must contact the responsible Rescue Coordination Centre (RCC); they must transmit all

[8] Immigration Law Practitioners' Association, 2014, " Information sheet, Dublin III".
[9] UNHCR, 2014, "The Dublin Regulation".
[10] Amnesty International, 2014, "Lives adrift: Refugees and migrants in peril in the central Mediterranean".

available information to the RCC, place themselves at its disposal and follow its instructions to assist with the rescue operation and disembark the rescued persons in a place of safety. This procedure is detailed in the operational plans of each Frontex-coordinated operation.[11]

Seasonal Workers Directive (2014/36/EU)

9. This Directive, passed in February 2014, was the first directive on legal migration to focus on low-skilled economic migration. Member States have until 30 September 2016 to transpose the provisions of the Directive into their national laws, regulations and administrative provisions. Its declared aim is to set out "fair and transparent rules of entry and stay of seasonal workers who are not EU citizens". It is destined for seasonal workers who retain their principal place of residence in a country outside of the EU and stay temporarily in the EU to carry out a "seasonal" activity such as agriculture and tourism. Its seeks to establish "a common set of rights to which seasonal workers are entitled during their stay in the EU in order to avoid their economic and social exploitation". It therefore stipulates that workers are entitled to equal treatment with nationals of the host member state with regard to terms of employment. This includes working conditions, leave and holidays, health and safety requirements at the workplace and social security.

10. In contrast to these positive provisions in relation to the human rights of migrants, the Seasonal Workers Directive also aims to provide for incentives and safeguards to prevent temporary stays from becoming permanent. However those who are already in the EU would be allowed to extend their contract or change their employer at least once. Re-entry of those who return every year is to be facilitated in order to promote circular migration. While the Directive provides a framework, again it leaves the Member States to determine how many workers they admit and allows them the latitude to reject applications if EU workers are available.[12]

New mobility partnerships and readmissions agreements under the GAMM

11. The GAMM framework has four priorities: better organising legal migration and fostering well managed mobility; preventing and combating irregular migration and eradicating trafficking in human beings; maximising the development impact of migration and mobility; and promoting international protection and enhancing the external dimension of asylum.

12. The GAMM is constituted by a complex and vast array of loosely associated policy and legal mechanisms, as well as a number of different migration related projects within origin, transit and destination countries, including those related to South-South migratory flows. The GAMM includes 8 regional dialogues, which are designed to foster coordinated action between the EU and other continents at the regional level. Also under the GAMM, sit plurilateral and bilateral agreements between EU and EUMS and specific third countries. In the period 2012-2013, the Commission supported more than 90 migration-related projects with a collective budget of over € 200 million.[13]

13. Mobility Partnerships are a key tool and have been prominent in the EU's recent external dialogue about its migration and border management. They encompass a broad range of issues ranging from development aid to temporary entry visa facilitation, circular migration programmes and the fight against unauthorised migration, including cooperation

[11] European Commission, 2015, "Reply by DG Migration and Home Affairs to the questions by the Special Rapporteur on the human rights of migrants".

[12] OHCHR Regional Office for Europe, 2015, "Overview of EU Migration".

[13] European Commission, 2015, "GAMM Implementation Report".

on readmission. The EU holds these Mobility Partnerships with 8 countries. The EU has signed Mobility Partnerships with Morocco, Tunisia, Azerbaijan and Jordan since the Special Rapporteur's report in 2013. Furthermore, a Common Agenda on Migration and Mobility has been signed with Nigeria. Discussions are ongoing with Belarus on developing a Mobility Partnership.

14. Since 2012, the EU has also signed readmission agreements with four new countries Armenia, Azerbaijan, Turkey and Cape Verde, which all entered into force in 2014.[14]

2. Institutional

Search and rescue

15. The further reinforcement of the SAR services provided to migrants in the Mediterranean Sea are an important institutional development since 2013. The Italian rescue operation, Mare Nostrum, was launched in response to the hundreds of migrants who died in shipwrecks near the island of Lampedusa in October 2013. Mare Nostrum is reported to have saved the lives of as many as 160,000 migrants in the Mediterranean Sea in 2014. Despite pressure from civil society organisations, the Italian government ended Mare Nostrum in December 2014 because of high costs, the lack of support from other European countries for the operation and the initiation of Operation Triton.[15]

16. Mare Nostrum was a specific mission run by the Italian Navy. It was initiated despite pre-existing regional discussions about a Frontex operation and was described by Italian Coast Guard Admiral Pettorino as "a very important message of humanity and civil responsibility sent out by the Italian Government". It wasn't a totally new operation but was a significantly scaled up version of the Italian naval operation "Constant Vigilance".

17. Reported operating budgets for Mare Nostrum differ. Media reports suggested that it cost EUR 9 Million per month to run, whereas funding granted by the European Commission Borders Fund (EBF) suggested that EUR 1.8 Million would cover a month's worth of running costs. More than 900 personnel are estimated to be involved in the implementation of Mare Nostrum, which stretched far beyond the territorial waters of Italy's territorial waters and continuous zone. The operation deployed a large number of navel ships, as well as helicopters, airplanes and drones.[16]

18. Debates have been witnessed within Europe about whether Mare Nostrum was a pull factor for irregular migrants. Pettorini asserted that the operation was not a migration pull factor and that those on boats were motivated by the humanitarian situations they were fleeing. However other reports have discussed how smugglers abused the presence of Mare Nostrum by making shorter journeys to where they knew migrant would be rescued allowing them to facilitate more sea-based trips.[17]

19. Operation Triton, a Frontex initiative, was launched as a response to the continued loss of life at sea in the Mediterranean in 2014. The Triton joint operation, coordinated by

[14] European Commission, 2015, "Reply by DG Migration and Home Affairs to the questions by the Special Rapporteur on the human rights of migrants".

[15] Amnesty International, 2014, "Italy: Ending Mare Nostrum search and rescue operation would 'put lives at risk'".

[16] Carrera, S & den Hertog, L., CEPS, 2015, "Whose Mare? Rule of law challenges in the field of European border surveillance in the Mediterranean".

[17] IOM, 2014, "Interview with Admiral Pettorino, Italian Coast Guard: "Saving Lives is Our Only Concern" & Carrera, S & den Hertog, L., CEPs, 2015, "Whose Mare? Rule of law challenges in the field of European border surveillance in the Mediterranean".

Frontex, started its activities in the Central Mediterranean in support of the Italian efforts on 1 November 2014.[18]

20. Whilst Operation Triton has been dubbed as a replacement for Mare Nostrum, the reality is more complex. When Mare Nostrum was launched there were two Frontex joint operations in existence and dialogue was on going about further community support. In 2014, the Italian Government started to lobby other EUMS for financial and technological support for an "exit strategy" from Mare Nostrum. Alongside this lobbying, other EUMS were trying to build support for additional resources for Frontex to support rescue at sea. As the concept of a Frontex joint operation developed there was significant confusion about the relationship between such a mission and the existing efforts of the Italian Government. It became clear that Frontex was not prepared to provide an operation as comprehensive as Mare Nostrum because of the high costs and that Operation Triton whilst providing SAR services would have much more of a focus on border management.[19]

21. With the support of 18 EUMS, as well as a number of EU agencies and international organisations, and a monthly budget of around EUR 2.9 million, Operation Triton was launched in November 2014. Despite reported disagreement about the continuation of Mare Nostrum within Italy and pressure from human rights organisations, the Italian Government ceased their SAR services but contributes to Operation Triton.[20]

22. Operation Triton covers a narrower geographic focus but coordinates the deployment of 2 fixed wing surveillance aircrafts, 3 patrol vessels, 2 coastal patrol vessels, 2 coastal patrol boats and 1 helicopter in order to assist Italy in coping with the on-going migratory flows. In addition, Italian assets form part of the operation. Five debriefing teams are deployed to support the Italian authorities in collecting intelligence on the people-smuggling networks operating in origin and transit countries as well as two screening teams.

23. The core objective of the Triton operation is to provide assistance to the Italian authorities' efforts to ensure effective surveillance of the maritime borders and in addition provides assistance to any person on board a vessel in distress.[21] Figures published by the European Commission on January 13 2015 indicated that since the launch of the Triton joint operation on 1 November 2014, the participating authorities have dealt with 130 incidents of which 109 were SAR cases. 16,402 people were detected, including 15,325 persons found on boats in distress. In addition to that, 57 facilitators were arrested. The EU has cited the operation as an example of solidarity and best practice sharing between Member States.[22]

European Border Surveillance System (EUROSUR)

24. The EUROSUR legislation discussed in became formally operational on 1 December 2013. It is designed to improve the information exchange and cooperation between border control authorities and will involve increased surveillance of the European Union's sea and land borders using a vast array of new technologies, offshore sensors and satellite tracking systems. Its "smart borders package", will create one of the world's largest

[18] Europa, 2015, "Questions and Answers: Smuggling of Migrants in Europe and the EU response"

[19] European Commission, 2015, "Reply by DG Migration and Home Affairs to the questions by the Special Rapporteur on the human rights of migrants"

[20] Carrera, S & den Hertog, L, CEPs, 2015, "Whose Mare? Rule of law challenges in the field of European border surveillance in the Mediterranean"

[21] Carrera, S & den Hertog, L, 2015, "Whose Mare? Rule of law challenges in the field of European border surveillance in the Mediterranean".

[22] Europa, 2015, "Questions and Answers: Smuggling of Migrants in Europe and the EU response

biometric databases, with as one of its key aims the identification of individuals who have overstayed their visas, together with the prevention of irregular migration. One of the three stated objectives of the EUROSUR system is to reduce deaths at sea contributes to protecting and saving the lives of migrants trying to reach European shores.

25. At European level, Frontex is establishing the European Situational Picture and the Common Pre-frontier Intelligence Picture, which will be continuously upgraded in 2014-2015. Frontex also established, as an initial service, the service for the "common application of surveillance tools", consisting of information derived from satellite imagery and from ship reporting systems together with the EU Satellite Centre and the European Maritime Safety Agency (EMSA).[23]

Frontex's Fundamental Rights Officer

26. Since the publication of the Special Rapporteur's 2013 report, the office of Frontex's Fundamental Rights Officer (FRO) has been more fully developed. The work of Ms. Inmaculada Arnaez Fernandez and those supporting her since the inception of the FRO mandate is considered an example of good practice. The Fundamental Rights Officer is involved in many activities of the Agency such as the establishment of a Code of Conduct for Joint Return Operations, the Vega handbook on children (soon to be finalised) and the establishment of a mechanism for monitoring fundamental rights. She is involved in preparing the operational plans for joint operations and she also carries out field visits to these operations. She reports to the Management Board at each of its meetings on joint operations, in particular any incidents reported during these operations, capacity building, as well as on relations with other agencies, such as the European Asylum and Support Office.[24]

The Fundamental Rights Agency

27. The EU's FRA has been active on the issues related to the human rights of migrants in relation to border management. Their 2014 annual conference focussed the human rights of migrants. The outputs of the conference reflected the key human rights concerns and a significant degree of commonality with the findings of the Special Rapporteur, as discussed in the policies and dialogues section below. In addition the agency have published a number of publications on key issues.[25]

3. Policies and dialogues

European Agenda on Migration

28. The European Commission launched the work on elaborating a European Agenda on Migration on 4 March 2015, which is expected to be adopted on 13 May. It aims to set out its ideas for a comprehensive, coherent and holistic approach to migration, covering both legal and irregular migration. It four main areas of focus are a common asylum system; a new policy on legal migration; fighting irregular migration and trafficking more robustly; and securing Europe's external borders.

[23] European Commission, 2015, "Reply by DG Migration and Home Affairs to the questions by the Special Rapporteur on the human rights of migrants".

[24] European Commission, 2015, "Reply by DG Migration and Home Affairs to the questions by the Special Rapporteur on the human rights of migrants".

[25] FRA, 2014, "Conference Conclusions".

European Council Strategic Guidelines

29. In its Conclusions of 26-27 June 2014, the European Council has adopted the new "Strategic Guidelines for Legislative and Operational Planning for the coming years within the EU's Area of Freedom, Security and Justice (AFSJ)". These Strategic Guidelines identified the need for an organised migration policy on both the basis of international protection and the long-term economic interests of the EU, as shown from the extracts below:

30. "Faced with challenges such as instability in many parts of the world as well as global and European demographic trends, the Union needs an efficient and well-managed migration, asylum and borders policy, guided by the Treaty principles of solidarity and fair sharing of responsibility, in accordance with Article 80 TFEU and its effective implementation. A comprehensive approach is required, optimising the benefits of legal migration and offering protection to those in need while tackling irregular migration resolutely and managing the EU's external borders efficiently.

31. To remain an attractive destination for talents and skills, Europe must develop strategies to maximise the opportunities of legal migration through coherent and efficient rules, and informed by a dialogue with the business community and social partners. The Union should also support Member States' efforts to pursue active integration policies which foster social cohesion and economic dynamism."[26]

The proposal for a holistic approach to migration from the European Parliament

32. In December 2014, the Civil Liberties Committee of the European Parliament adopted a resolution calling for a holistic EU approach on migration in the Mediterranean. The resolution includes sanctions for smugglers and human traffickers, and migration management agreements with third countries for cooperation and safe returns. It also calls for the strengthening of the border policy and security as well as enhancing the role of Frontex and European Asylum Support Office (EASO). Whilst the European Parliament has not yet passed the resolution, it suggests potential for the development of further political will in relation to the human rights of migrants.

EU Action Plan to counter migrant smugglers

33. The Action Plan, to be adopted in 2015, will focus on identifying and dismantling the network of criminals who make profit of people seeking protection and better life prospects in Europe, often exposing them to gross human rights violations. In doing so, it will fully take into account the need to respect fundamental rights of migrants and to avoid criminalization of those who assist them for humanitarian reasons.[27]

European Commission communication on EU Return Policy

34. In its 2014 Communication on EU Return Policy COM (2014) 199, the European Commission the Commission evaluated the Return Directive finding that it had effected legislative and practical changes in all Member States. It found that legislation in all Member States complies with the relevant rules fixed in Articles 16 of the Return Directive, whilst some practical shortcomings remain in a number of Member States. The Commission will follow up on all identified shortcomings.

[26] EUCO 79/14

[27] European Commission, 2015, "Reply by DG Migration and Home Affairs to the questions by the Special Rapporteur on the human rights of migrants".

35. In its upcoming "Return Handbook", due to be adopted in 2015, the Commission will expressly refer to relevant guidance documents from the Fundamental Right agency concerning the treatment of irregular migrants who are subject of return procedures. This handbook will also discuss key access to justice concerns in relation to migrants in situations of return.[28]

The draft students and researchers Directive

36. This draft legislation, proposed by the European Commission on 25 March 2013, aims to determine the conditions of entry and residence, and the rights, of students and researchers from non-EU countries to benefit from training and academic opportunities in the region. It recasts the existing Directives in this area with the main aim of facilitating admission and stay of these categories of third-country nationals in the EU. It is framed as a response to shifts in demographics and competition dynamics within the EU.[29] Whilst it is currently being negotiated by the European Parliament and the Council and is not adopted yet, the draft Directive recognises the role that non-EU nationals can play in responding to the demographic and societal shifts being seen in the EU.

The FRA annual conference

37. On 10-11 November, the European Union Agency for Fundamental Rights (FRA), together with the Italian Presidency of the Council of the EU, held its annual Fundamental Rights Conference, which was this year dedicated to the topic of fundamental rights and migration to the EU.

38. The event brought together over 300 EU and national decision makers, members of national parliaments, the judiciary, law enforcement agencies, and experts from international organisations, as well as national human rights bodies, civil society bodies and academics involved with migration issues on a daily basis. Speakers included EU Migration, Home Affairs and Citizenship Commissioner Dimitris Avramopoulos, Speaker of the Italian Chamber of Deputies Laura Boldrini, Italian Undersecretaries of State Senator Benedetto della Vedova and Domenico Manzione, MEP and Vice-Chair of the Committee on Civil Liberties, Justice and Home Affairs, Iliana Iotova, German Minister of State, Commissioner for Immigration, Refugees and Integration, Aydan Özoguz, FRA Director Morten Kjaerum, and Swedish Minister for Public Administration at the Ministry of Finance, Ardalan Shekarabi.

39. Participants agreed that the EU and its Member States should develop a more holistic approach to their migration and asylum policy. It was emphasised that fundamental rights are not just one element of such policies, but on the contrary form the normative framework in which they must be situated. It was emphasised at many points throughout the conference that the EU and its Member States need a comprehensive and sustainable migration policy, and that a new and positive narrative is necessary to counter the current negative image of migrants and migration that stresses the benefits of migration both to migrants themselves and to the countries hosting them. This is particularly true at present, as projected demographic trends in the EU mean that many areas of the economy may face an increasing shortage of labour in the coming years. Specific and practical measures are

[28] European Commission, 2015, "Reply by DG Migration and Home Affairs to the questions by the Special Rapporteur on the human rights of migrants".

[29] European Commission, 2013, "DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training voluntary service and au pairing".

needed to promote equal treatment, increase the political participation of migrants, and mainstream fundamental rights into integration policies at national, regional and local level [50]

European Migration Forum

40. The first meeting of the European Migration Forum (EMF) took place on the 26/27 January 2015 in Brussels. The EMF addressed issues and challenges in the management of mixed flows of migrants and asylum seekers across the Mediterranean. The discussions were structured around four thematic Workshops: First, access to the asylum procedure at the borders; Second, integration of beneficiaries of international protection; Third, a comprehensive approach to countering migrant smuggling; and Fourth, providing adequate information in countries of origin and transit.

41. Conclusions from the Forum included: to take stock of current migration laws and policies; to further develop Member States accountability in the implementation of EU laws, and independent monitoring mechanisms of border controls, surveillance, SAR, visa and asylum policies; to develop legal and regular channels to Europe for protection and employment; and to respect rights of undocumented migrants and de-criminalise migration and humanitarian assistance, including a firewall between immigration control and access to justice and services.[51]

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[50] FRA, 2014, "Conference Conclusions"

[51] Carrera, S & Huddleston, 2015, "European Migration Forum, Conclusions and Policy Recommendations"